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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD DARNELL,

Defendant and Appellant.

2d Crim. No. B207584
(Super. Ct. No. F403511)
(San Luis Obispo County)

Edward Darnell appeals an order determining him to be a mentally disordered offender (MDO) and recommitting him to the Department of Mental Health for treatment. (Pen. Code, § 2972, subd. (c).) ¹ We affirm.

On May 22, 2007, the San Luis Obispo County District Attorney filed a petition to continue appellant's treatment as an MDO. (§ 2970.) The petition alleged that appellant had been previously committed as an MDO and the commitment period would expire September 11, 2007.

At a September 24, 2007 hearing on the petition, appellant waived jury trial and stipulated that he met all the MDO criteria and should be placed in CONREP for outpatient treatment. Based on the stipulation and a psychiatric report, the trial court

¹ All statutory references are to the Penal Code.

found that appellant was an MDO and ordered outpatient treatment in the CONREP program. (§ 2972, subd. (d).)

In a November 2007 letter, appellant stated that he did not want to be released to CONREP. Appellant was permitted to withdraw the prior stipulation and waived jury trial on the petition.

Evidence was received that appellant met all the MDO criteria. (§ 2972, subd. (c).)² Doctor Phillip Kelly, a staff psychiatrist at Atascadero State Hospital, testified that appellant suffered from schizophrenia, paranoid type, manifested by "disorganizing thinking, delusions about his body, delusions about people controlling his behavior, [and] delusions about being tortured and raped." The doctor opined that the severe mental disorder was not in remission and that appellant represented a substantial danger of physical harm to others.

Based on Doctor Kelly's testimony, the trial court rescinded the prior order for CONREP outpatient treatment and entered a new order recommitting appellant for inpatient treatment.

Present Dangerousness

Appellant argues that the evidence does not support a finding of present dangerousness under the MDO statute. (§ 2972, subd. (c).) The phrase "substantial danger of physical harm to others" has been interpreted "to mean a prediction of future dangerousness by mental health professionals." (*In re Qawi* (2004) 32 Cal.4th 1, 24.)

Doctor Kelly testified that appellant continued to suffer from delusions and that appellant denied that he was mentally ill or needed treatment. Unless appellant received treatment, it was likely appellant "would go off medication and become severely psychotic again." Doctor Kelly explained that appellant (age 39) has been in institutions

² A MDO recommitment requires proof beyond a reasonable that defendant (1) has a severe mental disorder, (2) the disorder is not in remission or cannot be kept in remission without treatment, and (3) that by reason of the disorder, the defendant represents a substantial danger of physical harm to others. (§ 2972, subd. (c); *People v. May* (2007) 155 Cal.App.4th 350, 358.)

since age 14 and "would need considerable support to be able to behave in the community without having aggressive impulses and assaults." Although appellant was medication compliant, appellant "showed inability to really control his anger If he got frustrated, he would act out his anger."

Doctor Kelly opined that appellant posed a substantial danger to others because appellant had "a history of assaults that was fairly severe." The day before a CONREP interview, appellant was frustrated about a court ruling and kicked a wall in anger.

Doctor Kelley reiterated that appellant continues to have psychotic symptoms including "delusions of the body, semantical delusions, delusions of people controlling his mind, delusions of what people have done to him." In determining whether appellant represented a substantial danger to others, the doctor considered appellant's criminal history which included arson (the committing offense), assault with a deadly weapon, robbery, and assaults on a psychiatrist and nurse while institutionalized.

Appellant argues that the last serious assault occurred in 2003 and that he committed no acts of violence in the 12 month period before the recommitment hearing. Citing *People v. Gibson* (1988) 204 Cal.App.3d 1425, appellant claims that his criminal history and the wall kicking incident do not support a finding of present dangerousness.³

Under the MDO statute, " 'substantial danger of physical harm' does not require proof a recent overt act" of violence. (§§ 2962, subd. (f); see *In re Qawi, supra*, 32 Cal.4th at p. 24.) A mental health professional may and should take into account the prisoner's entire history in making an MDO evaluation. This includes prior violent offenses as well as the prisoner's mental health history. (*People v. Pace* (1994) 27 Cal.App.4th 795, 799.) Whether the prisoner "is mentally ill and dangerous to either himself or others . . . turns on the *meaning* of facts which must be interpreted by expert

³ In *Gibson* we held that an earlier MDO commitment scheme was unconstitutional because it did not require proof of present dangerousness. (*Id.*, at pp. 1429 & 1436.)

psychiatrists and psychologists." (*Addington v. Texas* (1979) 441 U.S. 418, 429 [60 L.Ed.2d 323, 333], emphasis added.)

Doctor Kelly's expert testimony was uncontroverted. In a sufficiency of the evidence appeal, we may not reweigh the evidence or determine the credibility of witnesses. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) The wall kicking incident and appellant's violent criminal history showed that appellant, by reason of his mental illness, had serious difficulty controlling his behavior and was a substantial danger to others. (See e.g., *In re Howard N.* (2005) 35 Cal.4th 117, 131-132.)

The trial court did not err in finding that appellant was an MDO and recommitting him for treatment. "The purpose underlying the MDO is to protect the public by identifying those offenders who exhibit violence in their behavior and pose a danger to society. [Citation.]" (*People v. Dyer* (2002) 95 Cal.App.4th 448, 455.)

The judgment (MDO recommitment order) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Ginger Garrett, Judge
Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

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